

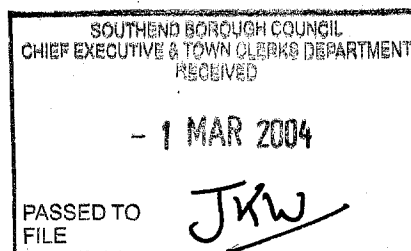


Office of the
Deputy Prime Minister
Creating sustainable communities

 the
Standards Board
for England

24 February 2004

To Chief Executives of:
County Councils and District Councils
London Borough Councils
The Greater London Authority
Joint Authorities
National Park Authorities
The Broads Authority



The Clerk:
City of London
Council of the Isle of Scilly
Fire Authorities in England
Police Authorities in England and Wales

The Clerk:
Parish councils in England

Dear Colleague,

**LOCAL INVESTIGATION AND DETERMINATION OF MISCONDUCT
ALLEGATIONS**

- ① - CONSULTATION BY THE OFFICE OF THE DEPUTY PRIME MINISTER ON REGULATIONS UNDER SECTION 66 OF THE LOCAL GOVERNMENT ACT 2000
- ② - CONSULTATION BY THE STANDARDS BOARD FOR ENGLAND ON GUIDANCE TO MONITORING OFFICERS ON LOCAL INVESTIGATIONS

We enclose copies of consultation papers which set out proposals to issue Regulations and guidance relating to the arrangements by which local authority monitoring officers may investigate allegations of misconduct by members referred to them by ethical standards officers.

Two separate consultation exercises are being undertaken on this issue; one by the Office of the Deputy Prime Minister, and the other by the Standards Board for England. The separate consultations are as follows:

- (i) Consultation by the Office of the Deputy Prime Minister on the proposed Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004. The aim of these is to make provision for local monitoring officers to investigate allegations of misconduct by members of relevant authorities, and to enable authorities' standards committees to make determinations following reports into such breaches made by monitoring

officers. The consultation documents comprise a paper describing the proposals, the draft Regulations themselves, and a draft functions order which clarifies the powers of the Standards Board to issue guidance to monitoring officers and standards committees on code of conduct issues.

Respondents who would like to comment on these proposals should send their comments to: William Tandoh, Office of the Deputy Prime Minister, 5/A1, Eland House, Bressenden Place, London SW1E 5DU. E-mail: william.tandoh@odpm.gsi.gov.uk

- (ii) Consultation by the Standards Board for England on draft guidance to monitoring officers of relevant authorities on carrying out their investigatory role under the proposed Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004.

Respondents who would like to comment on this draft guidance, should send their comments to: Michael Toft, the Standards Board for England, 1st Floor, Cottons Centre, Cottons Lane, London SE1 2QG. E-mail: michael.toft@standardsboard.co.uk

Copies of these consultations are being sent to all principal local authorities, parish councils, other relevant authorities and those with an interest in the issues. We are seeking comments on these consultation exercises by **18 May 2004**.

Any queries on this letter and consultation documents should be addressed to William Tandoh at the Office of the Deputy Prime Minister (0207 944 8765) in relation to the first consultation, and to Michael Toft at the Standards Board for England (0207 378 5032) in relation to the second consultation.

Yours sincerely,

P. Rowse

PAUL ROWSELL
Head of Democracy and
Local Governance Division
Office of the Deputy Prime
Minister

John Edwards

JOHN EDWARDS
Chief Executive
The Standards Board for
England



Local investigation of allegations of misconduct

Consultation by the Office of the Deputy Prime
Minister on the proposed Local Authorities
(Code of Conduct)(Local Determination)
(Amendment) Regulations 2004

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Introduction

The Local Authorities (Code of Conduct)(Local Determination) Regulations 2003, which came into force on 30 June 2003, make provision for the consideration by standards committees of relevant authorities of matters referred to them by ethical standards officers (ESOs) following the completion of ESOs' reports on whether authority members have breached the code of conduct for members. The Regulations include arrangements for the convening of committee hearings to consider ESOs' reports and appeal arrangements to apply in cases where members who are the subject of committees' findings seek and receive permission to appeal against those findings.

The aim of the proposed new Amendment Regulations is to make provision for monitoring officers to investigate allegations referred to them by ESOs that the code of conduct has been breached. They also provide for standards committees to consider reports made by monitoring officers following these investigations.

Purpose of consultation

This consultation paper seeks views on our proposals to amend the 2003 Regulations with regard to the way matters referred to the monitoring officer of the authority should be dealt with. The proposals amend the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003 and set out how a monitoring officer should conduct an investigation into a claim of misconduct against a council member, referred to him by an ESO. They also make changes to allow standards committees to consider reports referred to them by the monitoring officer, and not just, as now, reports by ESOs. The intention is that the hearing and appeals procedures set out in the existing Regulations will apply in the case of an investigation by a monitoring officer, as well as an investigation by an ESO.

These proposed Regulations follow the coming into effect on 18 November 2003 of section 113 of the Local Government Act 2003, which gave a new power to the monitoring officer to delegate his or her functions to a person nominated by him or her. Without this provision, the proposed Regulations would not have been workable, since monitoring officers are the usual source of advice to members, and in some cases conflicts of interest could have arisen if a monitoring officer had to investigate actions taken after he or she had provided advice on the same issue.

In addition, we are consulting on a draft functions order under section 57(3) of the Local Government Act 2000. The purpose of this is to clarify and put beyond doubt the extent of the powers available to the Standards Board for England in issuing guidance to standards committees and monitoring officers on carrying out their determination and inspection roles under the Regulations.

ODPM is consulting on these Amendment Regulations and functions order in parallel with consultation being carried out by the Standards Board on guidance to monitoring officers on how they should carry out their role.

The draft Amendment Regulations and draft functions order are enclosed at Annex A, and below, at Annex B, is a summary of the intended effect of the changes.

Issues for consultees

The Government would be interested to hear the views of consultees on any issues raised by the draft Regulations enclosed, and in particular on the following questions:

1. Are the investigative powers proposed for monitoring officers necessary and sufficient?
2. Are the powers proposed for standards committees to consider reports referred to them by monitoring officers necessary and sufficient?
3. Should all cases investigated by the monitoring officer be referred to the standards committee for decision? Or, alternatively, is there a case for giving the monitoring officer the function of determining whether for the most minor cases no evidence of a breach of the code has occurred, so no further action is needed? In the latter option, where there was such a determination, there would be no need for the case to be considered by the standards committee, and so such a case could be referred to the committee 'for information only'. As our proposals are currently drafted, however, every case will be considered by the committee (either by considering and accepting a monitoring officer's finding that there is no evidence of a breach of the code or by holding a full hearing into the matter), as a reassurance that all cases, including the most minor, will be subject to committee scrutiny.
4. Should monitoring officers be able to refer cases back to the ESO? Should there be provision for cases to be referred back to the ESO by the monitoring officer if new evidence is discovered suggesting that the case is more serious than originally thought by the ESO when he originally referred it to the monitoring officer? This could assist in ensuring that serious cases are appropriately treated.
5. Is the balance between the actions required of monitoring officers under the proposed Amendment Regulations and the Standards Board's proposed guidance to monitoring officers appropriate?

About this consultation exercise

Copies of this consultation paper are being sent to all principal local authorities, parish councils and other relevant bodies.

Any views which consultees may have on the proposals, including on the questions raised above should be sent by **18 May 2004** to:

William Tandoh
Office of the Deputy Prime Minister
Democracy and Local Governance Division
5/A1 Eland House
Bressenden Place
London SW1E 5DU

e-mail: william.tandoh@odpm.gsi.gov.uk

In due course, the Office may wish to publish responses to this consultation exercise or deposit them in the Office's library. Unless, therefore, a respondent specifically asks that a response be treated as confidential, it may be published or otherwise made public. Confidential responses will be included in any aggregate summary of the numbers of comments received and views expressed.

Annex A

STATUTORY INSTRUMENTS

2004 No. 0000

LOCAL GOVERNMENT

The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004

<i>Made</i> - - - -	2004
<i>Laid before Parliament</i>	2004
<i>Coming into force</i> - -	2004

The First Secretary of State, in exercise of the powers conferred upon him by sections 53(6) and (12), 54(4), 55(8), 66, 73(1) to (6) and 105 of the Local Government Act 2000^(a) hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 and shall come into force on *****2004.

(2) These Regulations apply to relevant authorities in England and to Police Authorities in Wales.

Amendment of the Relevant Authorities (Standards Committee) Regulations 2001(b)

2.—(1) The Relevant Authorities (Standards Committee) Regulations 2001 shall be amended as follows.

(2) In regulation 7(4) for the words “section 64(2) or 71(2) of the Act” there shall be substituted the words “section 60(2)(b), 60(3), 64(2), 70(4), 70(5) or 71(2) of the Act”.

(3) In regulation 7(4) for the words “section 64(2) of 71(2) of the Local Government Act 2000” there shall be substituted the words “section 60(2)(b), 60(3), 64(2), 70(4), 70(5) or 71(2) of the Local Government Act 2000”.

(a) 2000 c.22.
(b) 2001/2812.

Amendment of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003

3. The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003(a) shall be amended in accordance with the provisions of these Regulations.

Amendment of Regulation 2 (Interpretation)

4.—(1) Regulation 2 shall be amended as follows.

(2) After paragraph (2) there shall be inserted the following paragraph—

“(3) Any reference in these Regulations to a monitoring officer shall include any person nominated by a monitoring officer as his deputy for the purposes of section 5(7) of the Local Government and Housing Act 1989(b) and any person nominated under the provisions of section 82A (2) or (3) of the Local Government Act 2000 to perform any function.(c)”

Amendment of Regulation 4 (Modification of section 63 of the Local Government Act 2000)

5.—(1) Regulation 4 shall be amended as follows.

(2) For paragraph (2) there shall be substituted the following paragraph—

“(2) Section 63(1) of the Act shall be modified so that after paragraph (a) there is inserted the following paragraph—

“(aa) the disclosure is made for any one or more of the following purposes—

- (i) enabling a monitoring officer to perform any of his functions under this Part or under Regulations made under this Part in connection with the investigation and consideration of an allegation of a breach of an authority’s code of conduct;
- (ii) enabling a standards committee or sub-committee of a standards committee established under this Part to perform any of its functions under this Part or under Regulations made under this Part in connection with the investigation and consideration of an allegation of a breach of an authority’s code of conduct; or
- (iii) enabling a tribunal drawn from members of the Adjudication Panel to consider any appeal from a finding of a standards committee or sub-committee of a standards committee established under this Part in connection with an allegation of a breach of an authority’s code of conduct.”

Amendment of Regulation 5 (Reports received by a monitoring officer)

6.—(1) Regulation 5 shall be amended as follows.

(2) For Regulation 5 there shall be substituted the following regulation.

“Matters referred to a monitoring officer by an ethical standards officer

5.—(1) Where a matter is referred to a monitoring officer of an authority under section 64(2) or 71(2) of the Act he shall—

- (a) send a copy of any report received from the ethical standards officer who has referred the matter to any member who is the subject of such a report; and

(a) S.I. 2003/1483.

(b) 1989 c. 42.

(c) Section 82A was inserted in the Local Government Act 2000 by section 113(2) of the Local Government Act 2003 (2003 c.26).

- (b) arrange for the standards committee of that authority to meet to consider that report.
- (2) where a matter is referred to a monitoring officer of an authority under section 60(2)(b), 60(3), 70(4) or 70(5) of the Act he shall—
- (a) inform
 - (i) any member who is the subject of the allegation of the breach of the code of conduct;
 - (ii) the person who made the allegation; and
 - (iii) any parish council concerned
 that the matter has been referred to him for investigation;
 - (b) subject to paragraph (5), conduct an investigation into the matter referred to him;
 - (c) give any member who is the subject of the investigation the opportunity to comment on any allegations made;
 - (d) have regard during the conduct of his investigation to any guidance issued by the Standards Board pursuant to section 57(5) of the Act^(a) or pursuant to any order made under section 57(3) of the Act^(b).
- (3) Where a matter is referred to a monitoring officer of an authority under section 60(2)(b) 60(3) 70(4) or 70(5) of the Act he may—
- (a) call upon such advice and assistance as he may reasonably require to assist him in the investigation;
 - (b) require any authority concerned to meet the cost of such advice and assistance so far as such cost is reasonable; and
 - (c) require any authority concerned to afford him reasonable access to such documents in the possession of that authority as appear to him to be necessary for the purpose of conducting his investigation.
- (4) Where a matter is referred to a monitoring officer of an authority under section 60(2)(b), 60(3), 70(4) or 70(5) of the Act he may at any stage prior to the completion of his investigation make a written request to the ethical standards officer concerned requesting that the matter be referred back to that ethical standards officer for him to undertake an investigation and any such request must set out the reasons for making that request.
- (5) Where a matter is referred to an ethical standards officer under paragraph (4) the ethical standards officer may at his discretion—
- (a) direct that the matter be referred to him for investigation, in which case the monitoring officer concerned shall cease his investigation; or
 - (b) direct that the monitoring officer concerned continue his investigation in accordance with these Regulations.
- (6) Where a matter is referred to a monitoring officer of an authority under section 60(2)(b), 60(3), 70(4) or 70(5) of the Act he shall, following investigation of the matter—
- (a) make one of the following findings—
 - (i) that he considers that there has been a failure to comply with the code of conduct of the authority concerned or of any other authority concerned; or
 - (ii) that he does not consider that there has been a failure to comply with the code of conduct of the authority concerned or of any other authority concerned;
 - (b) prepare a written report concerning his investigation and his findings;

(a) Section 57(5)(b) of the Act gives the Standards Board for England power to issue guidance to relevant authorities in England and police authorities in Wales on matters relating to the conduct of members and co-opted members of such authorities.

(b) Section 57(3) of the Act gives the Secretary of State power to make an order conferring functions on the Standards Board for England in addition to those already conferred by Part III of the Act.

- (c) send a copy of his written report prepared in accordance with sub-paragraph (b) to any member who was the subject of the investigation;
 - (d) refer any report prepared in accordance with sub-paragraph (b) and which makes a finding in accordance with sub-paragraph (a)(i) to the standards committee of that authority for a hearing under the provisions of these Regulations;
 - (e) refer any report prepared in accordance with sub-paragraph (b) and which makes a finding in accordance with sub-paragraph (a)(ii) to the standards committee of that authority for its consideration.
- (7) Where a report is referred to the standards committee of an authority under the provisions of paragraph (6)(e) the standards committee shall make one of the following findings—
- (a) that it accepts the monitoring officer's finding that there has not been a failure to comply with the code of conduct of the authority concerned or of any other authority concerned, or
 - (b) that the matter should be considered at a hearing of the standards committee held under the provisions of these Regulations.
- (8) Where a standards committee makes a finding in accordance with of paragraph (7)(a) it shall, as soon as reasonably practicable—
- (a) take reasonable steps to give written notice of that finding to—
 - (i) any member who is the subject of that finding;
 - (ii) the ethical standards officer concerned;
 - (iii) the standards committee of the authority concerned;
 - (iv) the standards committee of any other authority concerned;
 - (v) any parish councils concerned; and
 - (vi) any person who made an allegation that gave rise to the investigation; and
 - (b) subject to paragraph (9)(b), arrange for notification of the finding to be published in one or more newspapers circulating in the area of the authorities concerned.
- (9) The notice under paragraph (8) (a) shall—
- (a) state that the standards committee found that there had not been a failure to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned; and
 - (b) not be published in accordance with paragraph (8)(b) if the member concerned so requests. ”

Amendment of Regulation 6 (Hearings by Standards Committees)

7.—(1) Regulation 6 shall be amended as follows.

(2) For paragraph (1) there shall be substituted the following paragraph—

“(1) Where

- (a) a monitoring officer refers to a standards committee—
 - (i) a report received from the ethical standards officer under section 64(2) or 71(2) of the Local Government Act 2000, or
 - (ii) a report prepared by the monitoring officer in accordance with regulation 5(6)(b) of these Regulations and which makes a finding in accordance with regulation 5(6)(a)(i); or
- (b) a standards committee makes a finding in accordance with regulation 5(7)(b) that a matter should be considered at a hearing of the standards committee held in accordance with these Regulations,

the standards committee shall convene to conduct a hearing in relation to the allegation that the member failed to comply with the authority's code of conduct or with the code of conduct of any other authority concerned."

(3) In paragraph (2) for sub-paragraphs (a), (b) and (c) there shall be substituted the following sub-paragraphs—

- "(a) the hearing is conducted having regard to any guidance issued by the Standards Board pursuant to section 57(5) of the Act or pursuant to any order made under section 57(3) of the Act;
- (b) subject to sub-paragraph (c), the hearing is held within the period of 3 months beginning—
 - (i) in the case of a report referred by an ethical standards officer under section 64(2) or 71(2) of the Act, on the date on which the monitoring officer first received that report; or
 - (ii) in the case of a report prepared by the monitoring officer under the provisions of regulation 5(6)(b), on the date on which that report is completed;
- (c) the hearing shall not be held until at least 14 days after the date on which—
 - (i) in the case of a report referred by the ethical standards officer under section 64(2) or 71(2) of the Act, the monitoring officer sent the report under the provisions of regulations 5(1)(a) to the member who is the subject of the hearing; or
 - (ii) in the case of a report prepared by the monitoring officer under the provisions of regulation 5(6)(b), he sent the report under the provision of regulation 5(6)(c) to the member who is the subject of the hearingunless in either case the member concerned agrees to the hearing being held earlier".

Amendment of Regulation 7 (Findings of Standards Committees)

8.—(1) Regulation 7 shall be amended as follows.

(2) In paragraph (3), for sub-paragraphs (iii) to (vi) there shall be substituted the following—

- "(iii) partial suspension(a) of that member for a maximum period of three months;
- (iv) partial suspension of that member for a maximum period of three months or until such time as he submits a written apology;
- (v) partial suspension of that member for a maximum period of three months or until such time as he undertakes any training or conciliation specified by the standards committee;
- (vi) suspension(b) of that member for a maximum period of three months;
- (vii) suspension of that member for a maximum period of three months or until such time as he submits a written apology;
- (viii) suspension of that member for a maximum period of three months or until such time as he undertakes any training or conciliation specified by the standards committee."

(a) See section 83(7), (9) and (10) of the Act for the interpretation of partial suspension.

(b) See section 83 (9) and (10) of the Act for the interpretation of suspension.

Signed by authority of the First Secretary of State

*****2004

Name
Parliamentary Under Secretary of State
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Order)

[TO BE DRAFTED WHEN REGULATIONS IN FINAL FORM]

STATUTORY INSTRUMENTS

2004 No.

LOCAL GOVERNMENT

The Standards Board for England (Functions) Order 2004

<i>Made</i> - - - -	2004
<i>Laid before Parliament</i>	2004
<i>Coming into force</i> - -	2004

The Secretary of State, in exercise of the powers conferred upon him by sections 57(3) and 105(2) of the Local Government Act 2000(a) hereby makes the following Order:

Citation, commencement and application

1. —(1) This Order may be cited as the Standards Board for England (Functions) Order 2004 and shall come into force on [] 2004.

(2) This Order applies in relation to relevant authorities in England and police authorities in Wales.

Interpretation

2. “the Act” means the Local Government Act 2000;
“authority” means a relevant authority in England and a police authority in Wales; and
“monitoring officer” means the monitoring officer who exercises functions in relation to an authority under Part III of the Act(b);

Power to issue guidance

3. In respect of matters referred by an ethical standards officer under section 60(2)(b), 60(3), 64(2), 70(4), 70(5) or 71(2) of the Act, the Standards Board may issue guidance to—

- (a) monitoring officers of authorities; and
- (b) standards committees of authorities.

(a) 2000 c. 22 (“the Act”).

(b) See section 83(12) of the Act for the exercise of functions by a monitoring officer of a responsible authority in relation to parish councils.

Signed by authority of the Secretary of State

Date

Name
Minister of State
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Order)

[TO BE DRAFTED WHEN REGULATIONS IN FINAL FORM]

Annex B

Summary of the main effects of the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 – Amendments to the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 – And the Standards Board for England (Functions) Order 2004

Regulation 2; amendment to Regulation 7 of the Relevant Authorities (Standards Committee) Regulations 2001

Under the existing Regulation, the deliberations of a standards committee in reaching its findings in a case following a report by an ethical standards officer (ESO) are regarded as exempt information and not to be disclosed. The amendment provides for this provision requiring that information is not disclosed also to apply where the case has been referred by the ESO to the monitoring officer for investigation.

Regulation 3

This Regulation states that these Amendment Regulations amend the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003.

Regulation 4; amendment to Regulation 2 of the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003

To amend the definition of “monitoring officer” in the Regulations to make clear that it includes any deputy nominated to act during his absence or illness (as permitted by section 5(7) of the Local Government and Housing Act 1989) and also any person nominated to perform any function under section 82A (2) or (3) of the Local Government Act 2000. This latter provision was introduced by the Local Government Act 2003 and enables a monitoring officer to nominate someone else to carry out his functions relating to local investigation of allegations of a breach of the code of conduct when he considers that in that particular case he ought not to carry out the functions himself. This is intended to avoid potential conflicts of interest.

Regulation 5; amendment to Regulation 4 of the 2003 Regulations

Under section 63(1) of the Local Government Act 2000, information gained in the course of an investigation by an ESO must not be disclosed unless one or more of a number of considerations are satisfied. The 2003 Regulations amended section 63 so as to add further circumstances under which there could be disclosure, namely to enable a standards committee to carry out its role or to enable a tribunal drawn from members of the Adjudication Panel to consider appeals from findings of standards committees. This amendment adds a further circumstance to those listed in the Act, as amended by the 2003 Regulations, so that disclosure of information obtained by the ESO may also be made to enable the monitoring officer to carry out his investigation role.

Regulation 6; amendment to Regulation 5 of the 2003 Regulations

To make provision for procedures to allow the monitoring officer to conduct an investigation, including getting access to relevant information and advice. To allow the monitoring officer to be able to make one of two findings following his investigation (ie either that he considers that there has been a failure to comply with the code of conduct, or that he does not consider that there has been a failure to comply with the code), to prepare a report and refer it to the standards committee and other relevant parties. These provisions parallel similar powers already available to ESOs to carry out investigations.

To make provision to allow the monitoring officer at any stage before he has completed his investigation to make a request to the ESO that the matter be referred back to the ESO for him to investigate the matter. The purpose of this is to make sure that if new evidence is discovered by the monitoring officer suggesting that the case is more serious than originally thought, it may be referred back to the ESO who may decide to take over conduct of the investigation. This provision will be supported by guidance from the Standards Board giving advice to monitoring officers about the circumstances in which it is envisaged that cases should be referred back. The aim is to ensure that serious cases are appropriately treated.

Where the monitoring officer makes a finding that he considers there has been no breach of the code, he must refer the case to the standards committee, who can make a decision either to accept the monitoring officer's recommendation, or else to consider the matter at a hearing of the committee. The intention is that any hearing should take place within the three month deadline set out in Regulation 7 of the amending Regulations.

Regulation 7; amendment to Regulation 6 of the 2003 Regulations

To provide that the procedures which apply for the setting up of hearings apply when a report by a monitoring officer is presented for consideration to the standards committee, and not just, as now, when a report by an ESO is presented.

Regulation 6 of the 2003 Regulations requires that a hearing of the standards committee must be held within three months after the date the monitoring officer receives the ESO's report. That Regulation also provides that there should be at least 14 days between the monitoring officer sending the ESO's report to the member who is the subject of the hearing, and the date of the hearing. Regulation 7 of the Amendment Regulations therefore provides for equivalent timescales to apply in the circumstances where the monitoring officer rather than the ESO provides the report for the committee to consider. The amendments provide that, when the monitoring officer has carried out the investigation, the hearing will be held within three months of the completion of his report. The amendments also provide that there will be at least 14 days between the sending of the monitoring officer's report to the member who is the subject of the hearing, and the holding of the hearing.

Regulation 8; amendment to Regulation 7 of the 2003 Regulations

An amendment has been made to Regulation 7(3)(iv) and (vi) of the 2003 Regulations to clarify the fact that it should be open to a standards committee to require a member to apologise and undertake training or conciliation, if it wishes, and not merely to apologise or undertake any training or conciliation. The standards committee may impose one or any combination of sanctions. The sanctions available are now listed separately to make clear the range of options open to the standards committee.

The Standards Board for England (Functions) Order 2004

We propose to issue a functions order under section 57(3) of the Local Government Act 2000 conferring further functions on the Standards Board for England relating to the issue of guidance. The Standards Board currently has the functions as set out at section 57(5) of the Act. These include the issuing of guidance to relevant authorities on matters relating to the conduct of members of such authorities. The aim of the functions order is to clarify and put beyond doubt the extent of the powers available to the Standards Board for England in issuing guidance to standards committees and monitoring officers on carrying out their roles under the Regulations.

Draft Guidance to Monitoring Officers by the Standards Board for England: local investigation of allegations of misconduct under the Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004

The Standards Board for England is preparing guidance for Monitoring Officers of all relevant authorities in England on carrying out local investigations under section 62 of the Local Government Act 2000. The guidance will be issued at the same time as The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 (the Regulations). The Office of the Deputy Prime Minister is conducting a separate consultation exercise on the Regulations.

Our consultation exercise is only concerned with the guidance that the Standards Board for England proposes to issue. The guidance covers cases referred back to Monitoring Officers by Ethical Standards Officers (ESO). It does not cover in detail local adjudications which have been dealt with in earlier guidance.

As part of our formal stakeholder consultation process, we are seeking your comments on the draft guidance by **18 May 2004**. Your input is valuable to us, as it will help to ensure that our guidance meets the needs of our target audience and enables Monitoring Officers to carry out their duties in the most appropriate way.

We are inviting comments both on the general content and tone of the guidance and also on any specific points within the guidance. However, we would be particularly interested to hear your views on the following issues:

1). Page 4.

Are the circumstances which an ESO will consider when deciding whether to refer an allegation for local investigation reasonable?

Are there other factors they should consider?

2). Pages 5 and 6.

The Regulations allow cases to be passed back to the ESO in certain circumstances. We have set out what we believe these limited circumstances might be.

Are there other circumstances where cases might be referred back?

Does the guidance distinguish clearly between those circumstances that warrant a referral back to the ESO and those circumstances that warrant a new allegation being made?

Are the circumstances outlined in the guidance reasonable?

3). Pages 6 and 7.

Is the Board correct to want to seek to maintain confidentiality?

Is the guidance clear on the issue of confidentiality?

4). Pages 7 and 8.

Is it appropriate not to have to produce draft reports in all cases? Are the factors to take into account when considering whether to issue a draft comprehensive?

5). Pages 7 and 8.

Does the Report Checklist, with regard to draft and final reports, provide sufficient steps to producing a comprehensive report?

6). Pages 9 and 10.

When appointing someone else to conduct an investigation on their behalf, should the Guidance give direction as to how Monitoring Officers can delegate their investigative role and to whom?

7). Pages 9 and 10.

Is the section on conflicts of interests clear and appropriate?

Is the Board right to suggest that a Monitoring Officer's chief role is to advise the Standards Committee rather than to investigate?

In addition we are considering issuing a guide on how to conduct an investigation. Would Monitoring Officers find this helpful?

Responses should be sent to:

Michael Toft
Policy Advisor
The Standards Board for England
1st Floor, Cottons Centre
Cottons Lane
London
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Local investigations

Draft Guidance for monitoring officers

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About this guide

This guide is for monitoring officers and ‘any person nominated by a monitoring officer as his [or her] deputy for the purposes of section 5(7) of the *Local Government and Housing Act 1989* and any person nominated to perform any function under the provisions of section 82A(2) or (3) of the *Local Government Act 2000*.’

In accordance with regulation 6 of the *Local Authority (Code of Conduct) (Local Determination) (Amendment) Regulations 2004*, anybody conducting an investigation must have regard to this guidance. In addition, they should be familiar with the regulations, and have effective procedures in place to enable them to conduct local investigations and determinations.

The Local Authority (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 amend the *Local Authority (Code of Conduct) (Local Determination) Regulations 2003* and references throughout refer to the *Local Authority (Code of Conduct) (Local Determination) Regulations 2003* as amended.

Referring allegations for local investigation

The *Local Government Act 2000* enables ethical standards officers to refer allegations that a member has breached the Code of Conduct to monitoring officers for local investigation. The regulations set out the framework under which this can be done.

An ethical standards officer may refer an allegation for local investigation at any point before they complete an investigation into the allegation. When considering whether or not to refer the allegation to you, ethical standards officers will use their discretion and take into account all relevant circumstances. For example, the ethical standards officer may consider whether, in their opinion:

- the matter does not appear to need the heavier penalties only available to The Adjudication Panel for England;
- the matter is an isolated occurrence and is unlikely to be repeated;
- the member has given a prompt, adequate and unreserved apology and whether remedial action has been taken;
- there is evidence that a local investigation would be perceived as unfair or biased;
- the allegation is of an entirely local nature and does not raise matters of principle;
- there are any relevant local political issues that may have a bearing on a local investigation.

When referring an allegation to you, the ethical standards officer will forward a copy of the allegation letter, along with any other information that they consider appropriate. Relevant legislation such as the *Data Protection Act 1998* and the *Human Rights Act 1998* may sometimes affect whether they are able to forward the original allegation letter. Where, for example, a letter contains allegations against multiple members but only one member is to be investigated, the ethical standards officer may edit the allegation letter before sending it to you.

Ethical standards officers can also refer completed investigation reports to monitoring officers for local determination by a standards committee. This is a separate process explained in The Standards Board for England’s guidance *Standards committee determinations: guidance for monitoring officers and standards committees*.

First steps: notifying the parties to an investigation

When an ethical standards officer refers an allegation for local investigation and determination, in addition to sending it to you they will notify the member who is the subject of the allegation, the complainant and, if appropriate, the clerk of any relevant town and parish council.

Regulation 5(2)(a) states that you must inform the member who is the subject of the allegation, the complainant and, if relevant, the parish clerk, when you receive a matter for local investigation. You should explain to them what will happen next, let them know that you will be in contact again, and provide any directions that you want to make regarding the forthcoming investigation.

In addition, regulation 5(1)(a) states that you must send the member who is the subject of the allegations details of the matter referred to you. This will enable the member to respond to the allegation that has been made against them. It is not necessary to send a copy of the original allegation to the parish clerk or to the complainant.

Notifying the standards committee

At this stage you should simply let your standards committee know that you are carrying out an investigation. In order to protect the confidentiality of your information, you should do this by confidential memo to the chair and all members. The memo should not name the complainant or the member against whom the allegation has been made, and should not be considered at a standards committee meeting. Keep the summary brief to avoid prejudice or the perception of prejudice in your investigation and the subsequent standards committee determination.

Next steps: conducting your investigation

When carrying out local investigations, you should be aware at all times of your obligations under the *Data Protection Act 1998*, the *Human Rights Act 1998* and the *Regulation of Investigatory Powers Act 2000*.

We will publish a separate guide to conducting investigations at a later date. This will not be statutory guidance and is therefore not included in this guidance.

Evidence of new breaches

In the course of an investigation, you may uncover evidence of activities by members that breach the Code of Conduct but extend beyond the scope of the investigation referred to you by the ethical standards officer.

Your powers relate only to the allegation that you have been given. If you uncover evidence of a possible breach that does not directly relate to the investigation, you should ask the person from whom you have obtained the information to make an allegation to The Standards Board for England, or make an allegation yourself. You should not investigate it.

You may uncover additional matters that relate directly to the allegation referred to you — for example, an isolated instance of rudeness that reveals a consistent pattern of behaviour. In these circumstances, you may, in accordance with regulation 5(4), write to the ethical standards officer to

request that the original allegation be referred back to them for investigation. Regulation 5(5) enables the ethical standards officer to decide whether to direct you to continue with your investigation or refer the matter to them and stop your investigation.

Under regulation 5(4), the ethical standards officer is not able to consider your request to accept a referral back after you have sent your report to the standards committee.

Disclosure of information

Section 63 of the *Local Government Act 2000* limits the circumstances in which information obtained by an ethical standards officer during an investigation can be disclosed. Any person who discloses information in breach of section 63 is guilty of an offence.

If an ethical standards officer refers an allegation for local investigation part-way through their own investigation into that allegation, under section 63 (as amended by the regulations), they are allowed to disclose any information that they have obtained during that investigation to enable you to carry out your own. There may be circumstances in which the ethical standards officer will be unable to disclose information — for example, where the Secretary of State has advised them that the disclosure would not be in the public interest.

The information that a monitoring officer obtains during the course of a local investigation is not covered by section 63 of the Act, but you should treat this information as confidential.

Confidentiality

We appreciate that it may be difficult to ensure complete confidentiality within your authority. While you are conducting your investigation, it is good practice to treat the information that you gather as confidential, and to ask the people that you interview, and anyone else aware of the investigation, to maintain confidentiality. This will help to ensure that your investigation is not seen as prejudiced. Maintaining confidentiality reduces opportunities for evidence to be seen as unfair or biased, and preserves the integrity of the investigation.

Any information that has been obtained by you during an investigation should not be disclosed unless:

- the disclosure will assist an ethical standards officer to perform their statutory functions under the law;
- the disclosure will assist the monitoring officer to perform their statutory functions under the law;
- the subject of the information has given their consent to the disclosure;
- the information has already lawfully been made public;
- the disclosure is made for the purposes of criminal proceedings in the UK.

Members should be reminded of their obligation under paragraph 3(a) of the Code of Conduct not to disclose information that they have received or that has been given to them in confidence.

Any draft report that you issue on the outcome of the investigation should be marked as confidential to preserve the integrity of any further investigation that you may need to undertake.

In addition, you should also consider whether the information that you collect during your investigation should be treated as confidential information under section 100(A) of the *Local Government Act 1972*, or be categorised as exempt information under schedule 12A of the 1972 Act as amended by the regulations.

Producing draft and final reports

When you have concluded your investigation, you should consider whether to produce a draft report. Factors to be taken into account when deciding whether to do this include:

- Is there factual complexity or ambiguity in your statement of facts?
- Is there a genuine dispute as to the material facts of the case?
- Has your investigation created an expectation that the parties will receive a draft for comment?

If you decide to produce a draft report it should be sent to the complainant and to the subject of the allegation for comment on your findings of fact. You do not need to send the draft to other witnesses or parties interviewed, although you should have confirmed individual statements with the witnesses who gave them. You do not need to send the draft report to the relevant parish clerk.

At this stage, members may make representations in whatever manner is most appropriate to them. See the report checklist below for more information on producing and circulating reports.

Responses to your draft may reveal the need for further investigation, or they may add nothing of further relevance. Once you have considered whether they add anything of substance to the investigation, you will be able to make your final recommendations.

Report checklist

Draft and final reports should contain the information listed below. The level of detail required will vary for each report, depending on the complexity of information to be considered and presented.

- a confidential marking (draft reports only)
- the date
- the legislation under which the investigation is being carried out
- a summary of the allegation
- the relevant sections of the Code of Conduct
- evidence
- your findings of fact
- your finding
- your reasoning

In addition, final reports should also contain documents relevant to your report:

- a schedule containing background documents;

- a schedule containing notes of telephone conversations, letters, and notes of interviews with witnesses; and
- a schedule containing chronology of events.

Draft reports

Draft reports should be clearly labelled as draft. They should state that they do not necessarily represent your final finding, and explain that you will issue a final report that will be presented to the standards committee.

Final reports

Final reports should be clearly labelled as final. They should state that these are your final findings and will be presented to the standards committee. Where your finding is that there has been no breach of the Code of Conduct, you should explain that the report will be sent to the standards committee for consideration. Where your finding is that there has been a breach of the Code of Conduct your report should make clear that the standards committee will conduct a hearing into the allegations.

The report should be accompanied by information explaining the circumstances under which the standards committee may conduct a hearing into the allegations, and the procedure for these events (see 'Consideration of the final report' below).

The final report should be sent to:

- the member who is the subject of the allegation;
- the person who made the allegation;
- the standards committee of your authority;
- any parish councils concerned;
- the ethical standards officer who referred the matter for investigation.

Consideration of the final report

If your report states that there has not been a breach of the Code of Conduct, the standards committee must decide at a meeting if they agree with that finding. At this meeting they should simply consider the report. They should not seek to interview witnesses or take representations from the parties. Their role is to decide whether, based on the facts set out in the report, there is a case to answer.

If the standards committee decides that, on the balance of probabilities, there is a case to answer, the full committee, or an appointed sub-group of the committee, will hold a hearing to make a final determination. The standards committee's decision will be based on careful consideration of the information in your report.

If, on the balance of probabilities, the standards committee agrees that there has not been a breach of the code of conduct, you should arrange for a notice to be published (see 'Publishing findings of no breach' below).

Standards committees may at this point make recommendations to their authorities on matters arising from the report.

If your report states that you consider that there has been a breach of the Code of Conduct, you must refer it directly for a hearing by the standards committee, or an appointed sub-group of the committee, to make a final determination.

Publishing findings of no breach

If the standards committee finds that there has been no breach of the Code of Conduct, regulation 8(1)(b) requires you to arrange for a notice to be published in an independent local newspaper.

The notice should contain a statement that the member did not breach the Code of Conduct and should also give a short explanation of how the decision was reached.

The member who is the subject of the allegation can request that the notice is not published. You should contact them at the conclusion of the standards committee's determination to find out their preference.

Arranging a hearing

You will need to arrange a standards committee hearing if:

- the final report concludes that there was a breach of the Code of Conduct;
- if the standards committee, having considered a report that concludes there was no breach, decides there is a case to answer.

You must arrange for a hearing to be held within three months of issuing the final report.

The hearing must be carried out in accordance with the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003 as amended by the 2004 regulations and our guidance, *Standards committee determinations: guidance for monitoring officers and standards committees*.

Conflicts of interest

Monitoring officers have four main roles in relation to the Code of Conduct:

- to provide advice to the standards committee;
- to advise members who are the subject of an allegation and the person making the allegation;
- to investigate alleged breaches of the Code of Conduct that an ethical standards officer has referred for local determination (this is a statutory role that can be delegated);
- to advise members about conduct issues before any alleged misconduct takes place.

Each role is important but may lead to a conflict of interest in relation to an investigation. For example, if you are asked to investigate an allegation against a member to whom you previously gave advice on the same issue, then it is likely that a conflict of interest would arise. If such a situation arises, you should delegate the investigation to somebody else.

In previous guidance, The Standards Board for England recommended that, in cases referred by an ethical standards officer for local determination, the monitoring officer should act as the main advisor to the standards committee, unless they have an interest in the matter that would prevent them from performing this role independently. Where a matter is referred back for local investigation, it is still vital that the standards committee has access to appropriate advice. You therefore need to consider whether you wish to investigate the matter and delegate the role of advising the standards committee or if it is more important to delegate the investigative role. Such a decision will need to be based on a careful assessment of the circumstances that are appropriate to your role and to your council.

For further information, refer to our guidance booklet, *Standards committee determinations: guidance for monitoring officers and standards committees*.

Delegation of investigations

Under section 113 of the *Local Government Act 2003*, monitoring officers can delegate investigations to their deputy or to any other person they nominate to conduct a local investigation. In common with monitoring officers, deputies and nominated people do not have to be legally qualified but they are equally obliged to follow guidance issued for monitoring officers.

Under section 5(1)(b) of the *Local Government and Housing Act 1989*, local authorities must provide you with sufficient resources to perform your duties. Deputies have the right to the same support as monitoring officers.

In many authorities, monitoring officers will be able to appoint a member of staff to carry out their investigation. Smaller authorities may find it useful to make reciprocal arrangements with neighbouring authorities to make sure that an appropriately experienced officer is available to carry out a local investigation. Authorities may also decide to hire suitable people from outside the organisation to carry out investigations.

To ensure that there is no confusion concerning the role and authority of the person delegated to conduct the investigation, monitoring officers should use a formally instituted procedure to record that they have delegated their investigative role to another person. Ethical standards officers must be informed of the outcome of the deputising process, as they may need to provide the person carrying out the investigation with further information.

Personal conflicts

You should take care to avoid any personal conflicts of interest. If you find that you have a direct or indirect interest in a local investigation, (for example, you have a direct financial interest in the subject of the allegation, or you know that a family member or friend is involved), you must not participate. Instead, you should notify the standards committee, the member concerned, the complainant and the ethical standards officer, explaining:

- that you will not take part in the investigation;
- the nature of your interest;
- who will carry out the investigation in your place.